

1 previous notes?

2 A Yes, my concerns.

3 Q So these are your concerns.

4 And, again, you've got an entry, your first
5 concern is "down the road." Is this still your thinking
6 about Dave's exit strategy?

7 A Yes.

8 Q Now here you've got an entry that says, "Kids will
9 buy David out. Would require waiver at present time."

10 What did you mean when you wrote this?

11 A I mean that at the present time in order for the
12 children to buy David's interest it would require a waiver
13 from the FCC.

14 Q At this time were Mr. Hicks and Mr. Dille
15 indicating to you that they had reached an agreement on this
16 point?

17 A No.

18 Q So what is -- so what is the -- what does this
19 note indicate? What was your purpose for writing it? Do
20 you know?

21 A That's my shorthand way of saying that in order
22 for the kids to buy David out it would require a waiver from
23 the FCC.

24 Q And this was still being discussed as a
25 possibility or --

1 A Yes.

2 Q So your focus was on the requirement for a waiver
3 if it was to be -- if it was to be one of the possibilities?

4 A Yes.

5 Q Were the parties still discussing other
6 possibilities? I think you had mentioned before selling it
7 to a third party?

8 A Yeah, I think it was brought up in the context
9 that it was a possibility.

10 Q So you're saying this was a possibility, but it
11 would require a waiver?

12 A But it would require a waiver.

13 Q The next entry you've got is "Licensee liability"?

14 A Yes.

15 Q Okay. And what is this?

16 A That was my concern of the responsibility of David
17 Hicks has the licensee of the station.

18 Q And what is the information here?

19 A It says, "Programming responsibility," I guess.

20 "Three or four employees, general manager," and I believe
21 that means that there would be a general manger there.

22 "Because JOA is in place, selling agreement, only agreement
23 with Booth stays in place."

24 Q So the -- okay.

25 Let's turn to page 2. What is the information on

1 this page?

2 A This is my notes when they were describing to me
3 what the -- what the deal is, what the business deal is for
4 the purpose of the station.

5 Q Okay. And what did you understand that to be?

6 A \$50,000 would be put in escrow at the time the
7 deal was signed; purchase price would be \$660,000. The
8 purchase price would be payable in accordance with a note.

9 THE WITNESS: And here, Your Honor, is where I was
10 writing down how the note was to be paid?

11 JUDGE CHACHKIN: Yes, I see that.

12 BY MR. WERNER:

13 Q And the notes that follow?

14 A That there was a lease on a studio, and that there
15 was some excess space, and there were two years to go, I
16 believe, on that lease; that the estimated closing date was
17 February 1994.

18 Q Let's turn to page 3.

19 JUDGE CHACHKIN: It says also "Combine space in,"
20 what does that mean?

21 THE WITNESS: I think that was a hope that space
22 could be combined so that there could be a savings in the
23 expense, I believe.

24 BY MR. WERNER:

25 Q The parties at this point were discussing the

1 possibility of --

2 A The reason I see, I see I have "excess space,"
3 yeah.

4 Q What's your recollection what "excess space"
5 meant?

6 A I think it meant that the Booth station had too
7 much space.

8 Q So the present facility at the Booth station had
9 more than it needed to operate?

10 A Yes.

11 JUDGE CHACHKIN: So was the discussion at this
12 time about sharing space between the Hicks station and the
13 Dille station? Is that what this refers to?

14 THE WITNESS: Or it was a plan maybe or a
15 possibility. I don't know.

16 BY MR. WERNER:

17 Q Turn now to page 3. Look at the entry at the top,
18 "Time commitment."

19 A Yes.

20 Q What were you -- what were you referring to there?

21 A It says, "Time commitment, one morning per month
22 in facility." That was in response to my question of Dave
23 Hicks how much time would be required by him.

24 Q How much time would be required by him in what
25 respect?

1 A As the operator of the station.

2 Q So this note is Mr. Hicks telling you how often he
3 would actually have to be in the station?

4 A Yes.

5 Q And this is -- this is in the context of Mr. Hicks
6 carrying out his responsibilities as the licensee?

7 MR. SHOOK: Objection.

8 MR. WERNER: Well, I'm simply referring back to
9 the witness's notes on page 1, Your Honor. He previously
10 testified about licensee liability and the responsibilities
11 that Mr. Hicks indicated he would have.

12 JUDGE CHACHKIN: Yes, but this is direct
13 questioning. Why don't you ask him what does this refer to
14 rather than suggesting an answer.

15 MR. WERNER: Withdraw the question.

16 JUDGE CHACHKIN: You could refer him to page 1 and
17 ask him what that refers to, but just don't suggest an
18 answer.

19 BY MR. WERNER:

20 Q What are you referring to when you're writing this
21 note?

22 A Well, I believe that this was what somebody was
23 telling me would be -- Dave Hicks was telling me would be
24 the minimum requirement, he thought, in managing the
25 station.

1 Q So this is what he believed would be his minimum
2 requirement?

3 A Yes.

4 Q Let's move on. Again, you've got another entry
5 that says "Down the road." This is the second time this
6 note appears.

7 Why are you -- what is the purpose for having it a
8 second time here?

9 A Well, in my role as counsel for Dave Hicks, I'm
10 raising again what the exit strategy is for Dave.

11 Q What is -- why are you raising it a second time?

12 A I'm raising it a second time because I'm concerned
13 about it, and I wanted to ascertain whether there was any
14 arrangement.

15 Q And what was -- what was your understanding on the
16 basis of your conversation with Mr. Hicks and Mr. Dille at
17 this meeting as to whether they had an agreement or an
18 understanding on this?

19 A I don't believe they had a -- they didn't have any
20 understanding at that time.

21 Q What's your basis for that?

22 A Well, I think it was thrown out that one
23 possibility would be to have Dave Hicks have a right of a
24 put, possibly there would be \$50,000, it might be paid so
25 much per year for five years, and then right away said,

1 well, no, maybe it would have to be a formula instead of a
2 fixed amount.

3 Q Now, who raised the issue of the put?

4 A I raised it.

5 Q And what was your purpose in raising it?

6 A The purpose was to suggest a way out for Dave down
7 the road should he choose to leave the investment. I
8 believe this was John Dille's response as a possibility to
9 my question.

10 Q And his response was? I'm sorry. His response
11 was what? What part of these notes?

12 A When I raised the possibility of a put, I believe
13 he said one possibility would be for a fixed amount payable
14 over a period of time. Another possibility would be to have
15 a formula.

16 Q Did Mr. Dille indicate whether he -- whether this
17 is point that he was agreeing to?

18 A No.

19 Q Let's see if I -- so you've indicated "down the
20 road." What's down the road? The exit strategy is the
21 circumstance of the option or now the put. Was it a concern
22 for you?

23 A Yes.

24 Q This is something you had raised previously with
25 Mr. Dille and with Mr. Hicks?

1 A Yes.

2 Q This was the third time in three consecutive days,
3 at each of these meeting, that you had raised this issue.

4 A Yes.

5 JUDGE CHACHKIN: Had you had any prior discussion
6 with Mr. Hicks concerning the need for an exit strategy?

7 THE WITNESS: Yes.

8 JUDGE CHACHKIN: What did Mr. Hicks want you --
9 what kind of exit strategy was Mr. Hicks interested in?

10 THE WITNESS: My impression was he wasn't much
11 interested in a exit strategy at that moment in time.

12 JUDGE CHACHKIN: You were the one that was --

13 THE WITNESS: I'm raising it. Not too unusual,
14 Your Honor. Somebody is getting into a business venture and
15 you're talking about how to exit, and they don't like to
16 focus on it unless you make them focus on it.

17 BY MR. WERNER:

18 Q That the end of this, at least at the end of the
19 notes.

20 At this point in time did you have any sense or
21 impression from your conversations with Mr. Hicks and Mr.
22 Dille that they had reached any sort of an agreement or
23 understanding on any sort of future option or put provision
24 or anything like that?

25 A No.

1 Q Now, Mr. Brown, you worked on at least five radio
2 station transactions with Mr. Hicks before the WRBR; is that
3 right?

4 A That's right.

5 Q During those transactions did Mr. Hicks
6 communicate with you about the status of any discussions he
7 had been having with the other parties?

8 A Yes.

9 Q Did he keep you informed?

10 A Yes, he did.

11 Q In any of those other deals, did you ever come to
12 find that Mr. Hicks -- find later on, did you come to find
13 that Mr. Hicks had failed to tell you if he had reached --
14 if he had conversations on a material point with one of the
15 other parties to the transaction?

16 A No.

17 Q Did you ever come to find that Mr. Hicks had
18 failed to tell you he had reached an agreement on a material
19 point with someone else in the transaction, whether
20 inadvertently or otherwise?

21 A No.

22 Q During the WRBR transaction did Mr. Hicks'
23 communication with you seem any different from that which
24 you had encountered on other transactions working with him?

25 A No, I didn't find it any different.

1 Q Did he appear to be hiding anything?

2 A No.

3 Q Based on all you know about Mr. Hicks and all the
4 time that you've worked for him, is he the sort of person
5 who would mislead either his other parties or the FCC?

6 A No.

7 Q Now, okay, after the meeting with Mr. Hicks and
8 Mr. Dille, what did you do next?

9 A Well, I believe I next received a draft of the
10 asset purchase agreement from Mr. Booth's attorney.

11 Q Okay. Now, in that regard would you please turn
12 to Pathfinder Exhibit No. 17?

13 A I have it.

14 Q Can you recognize the document?

15 A Yes, I can.

16 Q And could you tell me what it is?

17 A It's a draft dated October 11, 1993, of the asset
18 purchase agreement with comments -- with our comments on it,
19 and some further notes by me.

20 Q The numbered notations on the first page, are
21 those yours?

22 A Those are Steve Stankewicz, my colleague.

23 Q Okay. And the marginal notations?

24 A Those are mine.

25 Q The boxes that say "Okay"?

1 A Yes.

2 Q Similarly, looking through the document, why don't
3 you take a moment to look over it.

4 (Witness reviews document.)

5 BY MR. WERNER:

6 Q Are you finished looking it over?

7 A I've looked it over.

8 Q Are the remaining notations that you see in the
9 document yours and Mr. Stankewicz's?

10 A Yes. As well as some typed inserts which we
11 prepared.

12 Q And those appear at page?

13 A Sixteen.

14 Q Sixteen of the exhibit.

15 A Seventeen, 22.

16 Q And pages 9, 10, pages 9, 10, 11 of the exhibit,
17 and 16 of the exhibit?

18 A And 17.

19 Q What do these -- what do these pages, these insert
20 pages represent?

21 A Those represent our comments to the agreement.
22 Oftentimes when you're doing an agreement if you're going to
23 make some comments that are too long to write in an
24 agreement, you add them by an insert.

25 Q What are these specific -- these specific typed

1 items?

2 A Well, on page 9, these are additional
3 representations and warranties of the seller.

4 Q Are these the reps and warranties that you
5 referred to earlier --

6 A Yes.

7 Q -- that you had proposed?

8 These are the ones that you said Mr. Booth
9 wouldn't accept?

10 A That's right.

11 Q How did the process work on making comments on
12 these documents?

13 You've indicated that are notes here from Mr.
14 Stankewicz and yourself.

15 A The notes from Mr. Stankewicz and the typed
16 inserts were sent to the attorney for John Booth.

17 Q Okay.

18 A My handwritten notes were made as a result of a
19 phone conference with the attorney for John Booth.

20 Q So the marginal entries after each of the lines
21 that have Mr. Stankewicz's comments on it reflect that you
22 had raised those issues with counsel for Mr. Booth?

23 A Yes, and that they were agreeing to them.

24 Q In all instances? For instance, I see on page 6
25 of the exhibit.

1 A Well, they didn't agree to all of them.

2 Q No, it' s just whatever appears there is simply
3 reflecting the status of your conversations. Okay.

4 MR. WERNER: At this time, Your Honor, I'd like to
5 offer Pathfinder No. 17.

6 JUDGE CHACHKIN: Any objection.

7 MR. SHOOK: No objection.

8 JUDGE CHACHKIN: All right, the exhibit will be
9 received.

10 (The document referred to,
11 having been previously marked
12 for identification as
13 Pathfinder Exhibit No. 17, was
14 received into evidence.

15 JUDGE CHACHKIN: We'll take a 10-minute break.

16 (Whereupon, a recess was taken.)

17 JUDGE CHACHKIN: Back on the record.

18 BY MR. WERNER:

19 Q Mr. Brown, I ask to ask you to turn to Hicks
20 Broadcasting's exhibit binder to Hicks Exhibit No. 10.

21 A I didn't ask you about your organization system.

22 JUDGE CHACHKIN: No, mine is good.

23 (Laughter.)

24 THE WITNESS: What number?

25 MR. WERNER: Number 10.

1 THE WITNESS: I have it.

2 BY MR. WERNER:

3 Q Do you recognize it?

4 A Yes. It's an asset purchase agreement draft dated
5 November 4, 1993.

6 Q This is a draft of the same document we were just
7 looking at previously?

8 A Yes.

9 Q And the handwritten notations on it, do you
10 recognize those?

11 A Those are my notations on it.

12 Q Are all of these notes yours?

13 A Yes.

14 Q At page 9 of the document, page, as the legend at
15 the top "Insert page 16;" is that correct?

16 A Yes.

17 Q Is this typewritten section also -- was this also
18 produced by you?

19 A Yes.

20 Q Is this asset purchase agreement, the date on this
21 is November 4, 1993. Do you have any recollection as to
22 when you put these notes here?

23 A Well, I note below my signature, it says November
24 15, 1993.

25 Q That's the legend on the first page, it says

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(202) 628-4888

1 "Comments of Miller, Canfield, Paddock & Stone"?

2 A Yes.

3 Q Do these notes in this document represent the
4 later generation of the asset purchase agreement?

5 A Yes.

6 Q And, again, your marginal notations, the little
7 box notations indicate points which you had discussed with
8 Mr. Booth's counsel?

9 A Yes.

10 MR. WERNER: Your Honor, at this time we'd like to
11 offer Hicks Exhibit No. 10.

12 JUDGE CHACHKIN: Any objection?

13 MR. SHOOK: No objection.

14 JUDGE CHACHKIN: The exhibit is received.

15 (The document referred to,
16 having been previously marked
17 for identification as Hicks
18 Exhibit No. 10, was received
19 into evidence.)

20 JUDGE CHACHKIN: I think it was received already.

21 MR. WERNER: Not according to our records, Your
22 Honor.

23 JUDGE CHACHKIN: All right, Exhibit 10 is
24 received.

25 MR. WERNER: Perhaps it was one of the earlier

1 Hicks binders.

2 JUDGE CHACHKIN: Maybe.

3 BY MR. WERNER:

4 Q Mr. Brown, if you would please turn to Pathfinder
5 Exhibit No. 19.

6 A I have it.

7 Q Do you recognize this document?

8 A I do. It's an escrow agreement. Attached is an
9 exhibit, a draft dated October 11, 1993.

10 Q And what type of agreement is it?

11 A Escrow agreement.

12 Q There is a notation in the upper left-hand corner
13 that reflects Exhibit --

14 MR. SHOOK: Excuse me, counselor. Are we looking
15 at 19?

16 THE WITNESS: Oh, I'm sorry.

17 JUDGE CHACHKIN: Are you at 19?

18 MR. WERNER: Pathfinder Exhibit No. 19.

19 THE WITNESS: Excuse me.

20 Noncompetition agreement?

21 MR. WERNER: That's correct.

22 THE WITNESS: So I have the right one.

23 Noncompetition agreement dated October 11, 1993.

24 BY MR. WERNER:

25 Q There is a notation in the upper left-hand corner,

Heritage Reporting Corporation
(202) 628-4888

1 Exhibit 2.3(a)(6).

2 What does the designation signify?

3 A I believe it signifies that it's an exhibit to the
4 asset purchase agreement.

5 Q So this is one of the -- one of the documents
6 related to the asset purchase agreement that you had
7 testified about earlier?

8 A Yes.

9 Q Now, once again, there is a notation on the form
10 above the exhibit designation we've just discussed.

11 Can you tell me what that is?

12 A Comments of MCPS, October 20, 1993.

13 Q And MCPS is?

14 A MCPS is our firm.

15 Q The handwritten notations on this form, whose are
16 they?

17 A Some are Steve Stankewicz and some are mine.

18 Q And these reflect, these notes reflect yours and
19 Mr. Stankewicz's proposed changes to the agreement?

20 A Yes.

21 Q And your handwritten notations in the margin, is
22 that paragraph two? I think some of it is obscured by the
23 copying. But does that reflect again your discussions with
24 Mr. Booth's attorneys --

25 A Yes.

1 Q -- about the changes?

2 MR. WERNER: Your Honor, at this time we'd like to
3 offer Pathfinder Exhibit No. 19.

4 JUDGE CHACKIN: Any objection?

5 MR. SHOOK: No objection.

6 JUDGE CHACKIN: The exhibit is received.

7 (The document referred to,
8 having been previously marked
9 for identification as
10 Pathfinder Exhibit No. 19, was
11 received into evidence.)

12 BY MR. WERNER:

13 Q Mr. Brown, if you'd please turn to Pathfinder
14 Exhibit No. 22.

15 A I have it.

16 Q And can you tell me what this is?

17 A This is a noncompetition agreement draft dated
18 November 4, 1993.

19 Q Have you seen this document before?

20 A Yes.

21 Q And there are no handwritten notations on this
22 form, but there are a number of underlined provisions. For
23 instance, I'm looking down at paragraph four.

24 Does this document reflect the changes that you
25 had proposed or does it reflect your conversations with Mr.

1 Booth's attorneys?

2 A I believe so, yes.

3 MR. WERNER: Your Honor, at this time I'd like to
4 offer Pathfinder Exhibit No. 22.

5 JUDGE CHACHKIN: Any objection?

6 MR. SHOOK: No objection.

7 JUDGE CHACHKIN: The exhibit is received.

8 (The document referred to,
9 having been previously marked
10 for identification as
11 Pathfinder Exhibit No. 22, was
12 received into evidence.)

13 BY MR. WERNER:

14 Q Mr. Brown, if you'd please turn to Pathfinder
15 Exhibit No. 15.

16 A I have it.

17 Q Do you recognize this document?

18 A Yes, I do. It's a security agreement, exhibit to
19 the asset purchase agreement dated October 8, 1993, with
20 comments of our firm dated October 20, 1993.

21 Q And this is a draft of a security agreement?

22 A Yes.

23 Q Direct your attention to page 5. There are some
24 handwritten notations on this page. Whose notes are those?

25 A Those are mine.

1 Q And the notations, I take it, are deletions of
2 those sections?

3 A Yes.

4 Q And again, the notations in the margins look like
5 your conversations with Mr. Booth's attorneys?

6 A Yes, I believe there was no default notice
7 provision.

8 Q So these are changes that you had proposed to the
9 agreement?

10 A Yes.

11 Q And those marginal notes indicate that you had
12 discussed these with Mr. Booth's attorneys and that they
13 agreed?

14 A Yes.

15 MR. WERNER: Your Honor, at this time I'd like to
16 offer Pathfinder Exhibit No. 15.

17 JUDGE CHACHKIN: Any objection?

18 MR. SHOOK: No objection.

19 JUDGE CHACHKIN: Pathfinder Exhibit 15 is
20 received.

21 (The document referred to,
22 having been previously marked
23 for identification as
24 Pathfinder Exhibit No. 15, was
25 received into evidence.)

1 BY MR. WERNER:

2 Q Mr. Brown, I'd like to turn to another document as
3 well, Pathfinder Exhibit No. 18.

4 A I have it.

5 Q Can you identify this document for me?

6 A This is an escrow agreement, exhibit to the
7 purchase agreement draft dated October 11, 1993.

8 Q And once again, the handwritten notations which
9 appear throughout the document, they're made by you or Mr.
10 Stankewicz?

11 A Both of us.

12 Q Anyone else -- anyone else make any notations on
13 the document?

14 A No.

15 Q On page 2 at the top you have a notation marked
16 with an asterisk. Is that your note or Mr. Stankewicz's
17 note?

18 A That's my note.

19 Q And what does that note indicate?

20 A That note indicates that the parties were
21 discussing a change in the agreement which would retain the
22 letter of credit as security, that is, the letter of credit
23 posted by Dave Hicks, as security for the payment of the
24 note until the lump sum payment of \$105,000, which was, I
25 believe, to be made in the twelfth month was made.

1 Q And your testimony is that was a change in the
2 transaction?

3 A Yes.

4 Q The items below, these are also your changes in
5 subparagraph (e), subparagraph (f)?

6 A Yes .

7 Q Do you recall whether you had any discussions with
8 Mr. Booth's attorneys about this?

9 A About the changes?

10 Q Um-hmm.

11 A I believe I did, yes.

12 MR. WERNER: Your Honor, at this time we propose
13 to offer Pathfinder Exhibit No. 18.

14 JUDGE CHACHKIN: Any objection?

15 MR. SHOOK: No objection.

16 JUDGE CHACHKIN: The exhibit is received.

17 (The document referred to,
18 having been previously marked
19 for identification as
20 Pathfinder Exhibit No. 18, was
21 received into evidence.)

22 BY MR. WERNER:

23 Q Mr. Brown, if you'd next turn your attention to
24 Pathfinder Exhibit No. 21.

25 A I have it.

1 Q Can you identify this document for me?

2 A This is an escrow agreement which is an exhibit to
3 the purchase agreement draft dated November 4, 1993,
4 containing my notes, comments.

5 Q And this is the -- was this the next draft, do you
6 recall?

7 A I don't recall how many drafts of the escrow
8 agreement we had.

9 Q But this was a later draft?

10 A Later draft.

11 Q But these are your notations?

12 A Yes.

13 Q Reflecting your changes to the document?

14 A Yes.

15 MR. WERNER: Your Honor, at this time I'd like to
16 offer Pathfinder No. 21.

17 JUDGE CHACHKIN: Any objection?

18 MR. SHOOK: No objection.

19 JUDGE CHACHKIN: The exhibit is received.

20 (The document referred to,
21 having been previously marked
22 for identification as
23 Pathfinder Exhibit No. 21, was
24 received into evidence.)

25 MR. WERNER: May I have just a moment, Your Honor?

1 (Pause.)

2 BY MR. WERNER:

3 Q Mr. Brown, if you would please turn your attention
4 to Pathfinder Exhibit 16.

5 A This is a security agreement, exhibit to the
6 purchase agreement that --

7 Q Are you at Exhibit 16?

8 A Oh, excuse me.

9 Sixteen is a pledge agreement draft dated October
10 8, 1993, with our firm comments dated October 20, 1993.

11 Q This is a question that I have not asked before.
12 The red lining that appears on the document in a number of
13 places, in paragraph (a), and on page 2 in paragraph 2.2,
14 are those your notations or are those notes provided by Mr.
15 Booth's attorney?

16 A I believe those are changes supplied by Mr.
17 Booth's attorney.

18 Q And those would signify an earlier draft?

19 A Yes.

20 Q Turning to page 3 of the exhibit, there are some
21 handwritten notations?

22 A Yes.

23 Q And it appears there is a handwritten insert at
24 the top of the page. Is that your note?

25 A Those are my notes.

1 Q And the circled notation in the right-hand margin
2 beside that note?

3 A That's mine.

4 Q Does that again indicate that you've discussed
5 this with Mr. Booth's attorneys?

6 A I discussed it with Mr. Booth's attorneys and they
7 agreed to it.

8 MR. WERNER: Your Honor, at this time I would like
9 to offer Pathfinder Exhibit No. 16.

10 JUDGE CHACHKIN: Any objection?

11 MR. SHOOK: No objection.

12 JUDGE CHACHKIN: The exhibit is received.

13 (The document referred to,
14 having been previously marked
15 for identification as
16 Pathfinder Exhibit No. 16, was
17 received into evidence.)

18 BY MR. WERNER:

19 Q Mr. Brown, if you would please turn to Pathfinder
20 Exhibit No. 20.

21 Do you have that?

22 A Yes.

23 Q Have you seen this document before?

24 A Yes, I have.

25 Q Can you identify it?

1 A It's a schedule to the purchase agreement draft
2 dated October 12, with our firm comments of October 20.

3 Q And what type of document is it?

4 A It's a schedule to the --

5 Q What does it concern?

6 A It concerns the terms of payment in the promissory
7 note.

8 Q The handwritten notations on the page, are those
9 yours?

10 A They are.

11 Q And the notation at the bottom of the page, can
12 you tell me what that says?

13 A Mine is faint. I can read "to be changed to
14 agreement of the parties." There is something in the middle
15 I can't read.

16 Q It appears that there is a line that runs from
17 that bracket of the mark up around to what appears to be a
18 bracket that embraces all of paragraph one from subparagraph
19 (a) down to the bottom of the page.

20 Is that accurate?

21 A There is a line there with some notes that I've
22 made in the very right-hand margin.

23 Q I guess my question is, the notation that you just
24 read to us at the bottom, "to be changed blank to agreement
25 of parties," does that relate to that entire bracketed

1 paragraph?

2 A I believe so because of the comment to the right,
3 I believe says, "Welcome change to conform to the deal." I
4 think that's what that's supposed to mean. I can't read it.

5 Q All right. You testified earlier that one of the
6 changes that you had made during the course of negotiating
7 this deal was a change in the schedule of payments.

8 Is that's what is reflected in this exhibit?

9 A Well, or maybe not reflected, but it will be in
10 the next draft. That's my note to state that.

11 Q Thank you.

12 MR. WERNER: Your Honor, at this time I'd like to
13 offer Pathfinder Exhibit No. 20.

14 JUDGE CHACHKIN: Any objection?

15 MR. SHOOK: No objection.

16 JUDGE CHACHKIN: The exhibit is received.

17 (The document referred to,
18 having been previously marked
19 for identification as
20 Pathfinder Exhibit No. 20, was
21 received into evidence.)

22 BY MR. WERNER:

23 Q Mr. Brown, as to the period of negotiations which
24 all these documents that we've been look at, I take it, were
25 part, you testified earlier there came a time when you

1 started working on all the preparations in anticipating of
2 the closing. And we've previously discussed and you've
3 looked at and testified to various drafts of the operating
4 agreement and the negotiations concerning the terms of the
5 operating agreement.

6 And toward the end of that testimony you referred
7 to a put provision that you had prepared in response to
8 receiving the final draft of the operating agreement
9 containing the call provisions that you testified had been
10 proposed by Barnes and Thornburg. And the Judge asked you
11 about a copy of that document.

12 At this time I'd like to ask you to refer to Mass
13 Media Bureau Exhibit No. 61.

14 A This is a memorandum dated March 30, handwritten,
15 1994, by me to Bob Watson, with a draft of the put
16 provision, so-called, and a letter draft, yes.

17 Q Is this the document to which you referred earlier
18 you prepared after receiving the operating agreement?

19 A Yes.

20 Q And the date on this is March 30th?

21 A Yes.

22 Q And that was the day before the closing?

23 A Yes.

24 Q Let's turn to page 2 of the exhibit. You had said
25 that these provisions were incorporated into this letter.

1 Can you tell me why you prepared a letter rather
2 than modify the operating agreement?

3 A Yes. This was the day before the closing. We
4 didn't think we had time to work these provisions into the
5 operating agreement because we were scheduled to close the
6 next day.

7 Q Can you tell me a little bit about the
8 circumstances in terms of what was going on at the time,
9 what else was going on at the time you were trying to
10 prepare this?

11 A Well, we're getting ready to close the
12 transaction.

13 Q And what did that entail?

14 A Delivering all the documents that would be
15 required in the purchase agreement, as well as having all of
16 these exhibits that needed to be signed, prepared in final
17 form.

18 Q The document -- we had referred earlier to the put
19 provision, and I see in paragraph two of the letter that
20 there is an item identified as put provision.

21 Can you tell me again the objective behind this
22 portion of the letter?

23 A Yes. This was to be a way for Dave Hicks to exit
24 the investment if he chose to.

25 Q There is no reference to any sort of reciprocal

1 opportunity for Mr. Hicks to buy out the Dille children.

2 Why was that?

3 A I don't believe we ever discussed it. I thought
4 about it. I didn't think it provided a good exit for Mr.
5 Hicks.

6 Q And your earlier testimony had been that you had
7 been focusing on the exit for some time?

8 A Yes.

9 Q Had you ever discussed with Mr. Hicks any thought
10 about a reciprocal option?

11 A I don't believe so.

12 Q So your testimony is that it was not something
13 that you thought was compatible with the exit strategy that
14 you had in mind?

15 A Yes.

16 Q And the put provision that's embraced in paragraph
17 two did memorialize -- did that provision memorialize your
18 concern, or address your concern?

19 A That's supposed to address my concern, yes.

20 Q Okay. Now, let's turn to paragraph three for a
21 moment. There are some other items in this letter that deal
22 with more than just the put provision.

23 Can you tell me -- paragraph three, the portion
24 that appears at the bottom of page 2 of the exhibit, what
25 that is intended to address?

1 A During the course of negotiations with the seller,
2 one of the things that happened was -- two things happened.
3 One was a guarantee of the promissory note by the owners of
4 the purchaser that, I don't believe, was contemplated in the
5 beginning, and as I think you and I discussed, it was in the
6 amount of \$250,000, of which Dave Hicks had over half.

7 Also, there was the provision that the letter of
8 credit that Dave Hicks posted for the escrow agreement would
9 continue, I believe, for a year or until such time as the
10 \$105,000 payment was made on the note.

11 Q Now, is that a -- is that change that you're
12 referring to related to the notation that we saw in the
13 escrow agreement draft that you looked at earlier?

14 A I believe so.

15 So your question was why -- so I'm concerned about
16 the liability of Dave Hicks, which is now greater than it
17 was when we first started talking about this venture.

18 Q So had these -- these concerns arose, your
19 concerns about these issues arose as a consequence of these
20 changes in the transaction?

21 A Well, I had always been concerned about it, but
22 now his exposure is greater. He's guaranteed a part of the
23 promissory note. He's posted the letter of credit which
24 will continue as the -- for at least a year.

25 Q Now, had these concerns -- was this letter, when

1 you drafted this letter on March 30th, was this the first
2 time that you had been concerned about these issues?

3 A No.

4 Q Had you made other efforts to try and have a
5 resolution of these issues that you thought was satisfactory
6 to Mr. Hicks?

7 A Yes.

8 Q What had been the results of those efforts?

9 A Well, I hadn't been able to get the parties to
10 focus on it.

11 Q Can I ask you to turn to Mass Media Bureau Exhibit
12 No. 36?

13 A I have it.

14 Q Would you take a moment and look it over?

15 (Witness reviews document.)

16 BY MR. WERNER:

17 Q Do you recognize the document?

18 A I do.

19 Q What is it?

20 A It's a memorandum that I made on December 8, 1993,
21 to my file.

22 Q And what does it concern?

23 A Concerns -- it concerns the -- it reflects a
24 concern that I had with regard to Dave Hicks' expanded
25 liability in this transaction and the fact that we had not

1 addressed it in any documents.

2 Q You had not addressed it as of what point?

3 A As to any contribution agreement, for example,
4 among the owners, and I was concerned about it.

5 Q Now, the letter -- the memorandum is dated
6 December 8, 1993.

7 How does that date relate to the signing of the
8 asset purchase agreement?

9 A Well, I believe we signed it on November, the last
10 day of November, and so the agreement has been signed, and I
11 called David and expressed my concern about his possible
12 liability in the transaction being greater than it was at
13 the start.

14 Q As best as you could recall, what did Mr. Hicks
15 say to you?

16 A He told me not to worry about it; that John Dille
17 would take care of it.

18 Q Okay. Now, your memorandum here states that Mr.
19 Hicks has told you that John Dille has agreed to hold him
20 harmless with regard to any losses which might occur as a
21 result of the letter of credit or guarantee.

22 Were those Mr. Hicks' words?

23 A No, those are my words.

24 Q Your recollection is that Mr. Hicks told you not
25 to worry about it, that John would take care of it?

1 A Yes.

2 Q Did you ask him specifically in that conversation
3 what he meant by that?

4 A No, I did not.

5 Q Did you ask him if he had had any conversations
6 with Mr. Dille about this issue?

7 A No.

8 Q Did he indicate to you that he had had any
9 conversations with Mr. Dille about this issue?

10 A No.

11 Q Well, I guess my question, Mr. Brown, is this:
12 You prepared this memorandum to the file on December 8th
13 where you indicated that Mr. Hicks had an agreement with Mr.
14 Dille where Mr. Dille was going to hold him harmless on
15 these issues that you had expressed concern about.

16 With this memorandum in mind, what was your
17 purpose in preparing the side letter that we were looking at
18 as Mass Media Bureau Exhibit 21 and including the provisions
19 in there concerning the guarantee and the letter of credit?

20 MR. SHOOK: Just to clarify, I think you meant 61,
21 not 21.

22 MR. WERNER: Did I say 21?

23 MR. SHOOK: It's Mass Media Bureau Exhibit 61.

24 MR. WERNER: Okay. Mass Media Bureau Exhibit No.
25 61. Excuse me. If I misstated it, I apologize.

1 THE WITNESS: Well, just because Dave Hicks told
2 me this, I continued to be concerned about his liability for
3 a number of reasons.

4 If somebody orally says to somebody else that
5 they'll guarantee an obligation, I doubt that's enforceable
6 in Michigan. I'm certain it isn't. So that was one
7 concern, and I just don't know whether they had any
8 discussion about it or not so I wanted to make sure we
9 covered the point.

10 MR. WERNER: Just a moment, Your Honor.

11 (Pause.)

12 BY MR. WERNER:

13 Q Mr. Brown, if I could ask you to look at the first
14 page of the letter, the second page of the exhibit.

15 A What number?

16 Q I'm sorry. Mass Media Bureau Exhibit No. 61.

17 There is some handwritten notations that appear in
18 paragraph two of the letter. Do you see those?

19 A I do.

20 Q Whose notations are those?

21 A Those are mine.

22 Q And those were -- when did you put those on the
23 document?

24 A Well, I put them on before it was sent.

25 Q So these were additional modifications that you

1 had made to your own letter before you sent it to Mr.
2 Larson?

3 A Yes. Steve Stankewicz and I discussed this. He
4 prepared the draft and I wrote that in before we sent it.

5 Q Was there any reason why you didn't simply
6 reiterate the letter with the changes made?

7 A Time. We're on the last day before the closing.

8 Q Just a few more questions. I'd like to turn to
9 another subject right now.

10 Mr. Brown, you've testified earlier that you had
11 represented Mr. Hicks from his very first acquisition of a
12 radio station.

13 Did you serve in any capacity in -- well, first I
14 should ask. What sort of a -- did Mr. Hicks acquire the
15 stations as an individual or was an entity established to
16 acquire those stations?

17 A An entity was established, a corporation.

18 Q And in addition to serving as Mr. Hicks' attorney,
19 did you serve in any capacity in his company?

20 A Yes, I also served as a director.

21 Q How long did you serve as a director?

22 A Since the inception through the merger, and then I
23 continued as a director after the merger.

24 Q So in connection with the merger of Hicks
25 Broadcasting Corporation and the Airborne Group that created

1 Crystal Radio you became a director of Crystal Radio?

2 A Crystal is Hicks with a name change, so I
3 continued as a director.

4 Q Fair enough.

5 Do you recall in connection with your service as a
6 director attending a meeting of the board of directors on
7 September 28th of 1993?

8 A A board of directors of which company?

9 Q Of Crystal Radio Group.

10 A I do.

11 Q Do you recall -- well, first of all, can you tell
12 me, to the best of your recollection, how long that meeting
13 lasted?

14 A Well, that was the first meeting of the board of
15 directors for Crystal after the merger, and I believe it
16 lasted about -- I think it started in the morning about
17 9:00, and lasted for about three hours.

18 Q During the course of that meeting do you recall
19 any discussion being devoted to Mr. Hicks' participation in
20 the WRBR transaction?

21 A Yes, I do.

22 Q What can you recall about that?

23 A I can remember that it was at the very end of the
24 meeting. There was a number of items on that agenda taken
25 up at the meeting which were -- I don't know if I want to